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October 30, 2003

VIA UPS AND ELECTRONIC MAIL

**Ms. Mary L. Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station
Boston, MA 02110**

**Re: D.T.E. 03-60, Response to Motion for Protective Treatment of Highly
Sensitive Confidential Information of SBC Telecom, Inc.**

**Reservation of Right to Object to Motion of Wiltel Local Network, LLC
for Protective Treatment of Highly Sensitive Confidential information**

Dear Ms. Cottrell:

By this letter, and pursuant to paragraph 5 of the Protective Order issued by the Massachusetts Department of Telecommunications and Energy ("Department") on October 1, 2003, Broadview Networks, Inc., Bullseye Telecom, Inc., Choice One Communications of Massachusetts, Inc., Focal Communications of Massachusetts, Inc., InfoHighway Communications Corp., McGraw Communications, Inc., MetTel, Talk America Inc., XO Communications of Massachusetts, Inc., and Z-Tel Communications, Inc., by their counsel ("Respondents"), hereby respond to the October 23, 2003, Motion for Protective Treatment of Highly Sensitive Confidential Information submitted by SBC Telecom, Inc. ("SBC Telecom"), in the above-captioned proceeding ("SBC Telecom Motion"). Respondents object to the SBC Telecom Motion to the extent to which it limits production of SBC Telecom's response to only Department Staff and not to counsel and their employees whom are actively involved in this proceeding.

Specifically, in its Motion, SBC Telecom seeks to limit the disclosure of its responses to the Department's information requests numbered 2, 3, 6, 7, 15, 16, 17 and 18 to the Department only and "objects to disclosing the responses to any participant or non-participants in this proceeding and the persons listed in paragraph 3 of the Department's Protective Order who are representatives or employees of participants or non-participants." SBC Telecom Motion

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at 1. Persons listed in paragraph 3 of the Protective Order include, but are not limited to counsel of record, in-house counsel who are actively involved in the proceeding, partners, associates secretaries, paralegal assistants and employees of such counsel. Protective Order at ¶ 3. Later in the Motion, SBC Telecom states that it seeks to preclude disclosure to “representatives and employees of participants and non-participants in this proceeding” but does not mention counsel of record or in-house counsel. SBC Telecom Motion at 4. Clarification as to the scope of the limitation of disclosure was sought from Mr. Robert Dewees, Jr., attorney for SBC Telecom, however, Mr. Dewees was unable to confirm whether SBC Telecom would object to disclosure to counsel for parties in this proceeding. Due to the possible conflicting interpretations as to the limitations of the scope of disclosure and, out of an abundance of caution, Respondents file this objection to the SBC Telecom Motion. In support of its objection, Respondents submit the following:

Each individual requesting disclosure is an attorney with the law firm of Kelley Drye & Warren LLP, and represents numerous competitive local exchange carriers who are parties in this proceeding.¹ Each individual has executed a Certification of Compliance with Protective Order and has filed the Certification with the Department.

Respondents’ counsel requires access to the SBC Telecom responses in order to provide full legal representation to the identified parties in this proceeding. Without access to the information, Respondents’ counsel will not be afforded an accurate representation of the competitive environment in Massachusetts and will be unable to fully litigate the issues addressed in the proceeding. The information that SBC Telecom seeks to obtain classification as “highly sensitive” is not available through any other means other than production by SBC Telecom. While Respondents are sensitive to the concerns raised in the SBC Telecom Motion regarding disclosure of the information to its direct competitors, Respondents note that there are

¹ Steven A. Augustino and Andrew M. Klein are attorneys of record for BridgeCom International, Inc., Broadview Networks, Inc., Choice One Communications of Massachusetts, Inc., Focal Communications of Massachusetts, Inc., and XO Communications of Massachusetts, Inc.

Genevieve Morelli and Michael B. Hazzard are attorneys of record for Broadview Networks, Inc., Bullseye Telecom, Inc., InfoHighway Communications Corp., McGraw Communications, Inc., Mettel, Talk America, Inc., and Z-Tel Communications, Inc.

Ross A. Buntrock, Jennifer M. Kashatus, Erin W. Emmott and Heather T. Hendrickson are associates with Kelley Drye & Warren LLP who are assisting with this proceeding.

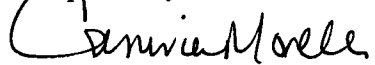
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sufficient additional protections currently in place in the proceeding in order to avoid any disclosure of the information to the public or the direct competitors of SBC Telecom.²

SBC Telecom overreaches with its argument that "the list of persons to whom disclosure is permitted in the Department's Protective Order in paragraph 3 is far too broad to adequately protect SBCT's competitive position." SBC Telecom Motion at 3. Respondents note that AT&T Communications of New England, Inc., ("AT&T") in its Motion for Heightened Protective Treatment of its Response to the Department's Request Number 11, filed with the Department on October 23, 2003, is permitting disclosure of its response to request 11 to "attorneys involved in the proceeding who have signed the protective order." AT&T Motion at 1. If AT&T is comfortable with permitting counsel access to its highly confidential information, SBC Telecom should be as well. The Department should afford all attorneys involved in this proceeding with access to the complete record in this case and not permit individual parties to effectively limit the ability of any party to participate through their counsel in this proceeding. Therefore, based on the foregoing, Respondents request that the Department require SBC Telecom to permit attorneys of record to have access to its responses to the Department's Information Requests numbered 2, 3, 6, 7, 15, 16, 17 and 18.

In addition, as of the date of this letter, Respondents have not been served with the Motion of Wiltel Local Network, LLC for Protective Treatment of Highly Sensitive Confidential information ("Wiltel Motion"). Therefore, by this letter, Respondents hereby reserve their right to object to the Wiltel Motion within five (5) business days of receipt of the Wiltel Motion, should it be necessary. Should you have any questions, please feel free to contact Steven Augustino at (202) 955-9608 or Genevieve Morelli at (202) 887-1230.

Respectfully submitted,



Steven A. Augustino, Esq.
Genevieve Morelli, Esq.

cc: Paula Foley, Hearing Officer
Robert L. Dewees, Jr. (rdewees@nixonpeabody.com)
D.T.E. 03-60 Service List (via email)

² The Protective Order outlines several requirements, including prohibitions on copying, limitations on access to the information and procedures for including the information in the proceeding, all of which provides SBC Telecom with additional reassurances against disclosure of the information.